

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ADREW RAINEY,

Defendant and Appellant.

D075063

(Super. Ct. No. SCN389079)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel B. Goldstein, Judge. Affirmed.

Christine M. Aros, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Michael Andrew Rainey entered into a plea agreement, under the terms of which he ultimately pleaded guilty to one count of possession of methamphetamine for purposes of sale (Health & Saf. Code, § 11378) and admitted a prior violation within the meaning

of Penal Code¹ section 1203.07, subdivision (a)(1). The balance of the charges and allegations were dismissed. The parties also stipulated to a two-year term in local prison under section 1170, subdivision (h). The court imposed the stipulated sentence.

Rainey filed a timely notice of appeal; however, he did not obtain a certificate of probable cause (§ 1237.5). The notice of appeal indicated Rainey was appealing from the denial of a motion to suppress evidence under section 1538.5.²

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), indicating she has been unable to identify any arguable issue for reversal on appeal. Counsel asks this court to review the record for error as mandated by *Wende*. We offered Rainey the opportunity to file his own brief on appeal, but he has not responded.

DISCUSSION

Appellate counsel recognizes that without a certificate of probable cause Rainey cannot challenge his guilty plea which includes a stipulated sentence. (*People v. Panizzon* (1996) 13 Cal.4th 68; § 1237.5.) Also, the absence of a motion to suppress evidence under section 1538.5 means Rainey cannot challenge his plea on the basis of denial of such motion.

In addition to asking this court to review the record for error as required by *Wende*, counsel has identified a possible, but not arguable issue for our consideration as

¹ All further statutory references are to the Penal Code unless otherwise specified.

² Rainey did not file a motion to suppress evidence in the trial court.

required by *Anders v. California* (1967) 386 U.S. 738, 744-745 (*Anders*). The possible issue is whether the guilty plea failed to comply with *Boykin v. Alabama* (1969) 395 U.S. 238, and *In re Tahl* (1969) 1 Cal.3d 122.

We have reviewed the entire record as mandated by *Wende* and *Anders*. We have not discovered any arguable issue for reversal on appeal. Competent counsel has represented Rainey on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.